

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 100307-001

v

Midwest Security Insurance Company
Respondent

Issued and entered
this 12th day of November 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 22, 2008, XXXXX on behalf of her son XXXXX ("Petitioner") filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The case was accepted on September 29, 2008. The case involves medical issues so it was assigned to an independent review organization which provided its recommendation to the Commissioner on October 9, 2008.

II
FACTUAL BACKGROUND

The Petitioner has health care coverage with Midwest Security under a group insurance certificate.

Between January 8 and January 10, 2008, the Petitioner received microspine surgery and related services at the XXXXX in XXXXX. Midwest denied coverage for this care as experimental, investigational, or unproven treatment that was not medically necessary and therefore not a

covered benefit.

The Petitioner appealed. Midwest Security reviewed the claims but did not change its decision and issued a final adverse determination dated July 28, 2008.

III ISSUE

Is Midwest Security correct in denying coverage for Petitioner's treatment?

IV ANALYSIS

Petitioner's Argument

The Petitioner's mother says that her son had been experiencing back pain for seven years. She notes that this pain radiates to the testicular area, he has numbness in his feet which is worse in the right foot. His pain is mechanical in nature and is aggravated by his work as a plumber. He has tried all kinds of measures to control his pain but none have been successful. After numerous other tests and an MRI, Petitioner's primary care physician concluded that spinal surgery was necessary. Petitioner's mother argues that due to her son's young age they needed to investigate procedures other than spinal fusing and caging. They found that microspine surgery was less invasive and offered a good success rate.

Although Petitioner had already spoken to Midwest regarding coverage, he called again when the decision was made to have microspine surgery. Petitioner says prior to the surgery he attempted to contact Midwest about what would be covered and was advised by Midwest representative XXXXX that, since XXXXX participated with Midwest, the Petitioner would only be responsible for the \$250.00 annual deductible. Based on these calls, he budgeted for the amount he would owe. Petitioner's treatment included lumbar transpedicular discectomy at L3-4, L4-5, and L5-S1 via endoscopy/fluoroscopy. Midwest initially paid some claims, some were denied and Midwest later decided to take back the money on the paid claims.

Petitioner believes that all of the claims should be paid because he attempted to get any

necessary approvals, but was given misinformation by Respondent.

Midwest Security Insurance Company's Argument

Midwest Security says it reviewed the Petitioner's medical records and determined that back surgery was not medically necessary and, therefore, was not a covered benefit. The "Limitations" section of the certificate excludes coverage for treatment that is experimental, investigational, unproven or not medically necessary which is defined in the certificate as:

medical treatment which is consistent with currently accepted medical practice. Confinement, operation, treatment or services are not considered Medically Necessary unless they are consistent with professionally recognized standards of care with respect to intensity, frequency and duration, and provided in the most economical and medically appropriate site for treatment, as determined by the Company. The treatment or care, including supplies and equipment, must be: consistent with the Covered Person's medical condition; known to be safe and effective by most Physicians who are licensed to treat the condition at the time the service is rendered; and not provided primarily for the convenience of the Covered Person or Physician.

Midwest Security asserts that the Petitioner's back surgery was not medically necessary and its denial is, therefore, in accordance with the terms of the certificate.

Commissioner's Review

In reviewing adverse determinations that involve questions of medical necessity or clinical review criteria, the Commissioner obtains an analysis of the medical issues from an independent review organization ("IRO"). The IRO reviewer for this case is a physician in active practice certified by the American Board of Orthopedics, a member of the American Academy of Orthopedic Surgeons, a member of the American Medical Association, and a member of the Eastern Orthopedic Association. It is the IRO reviewer's opinion that "transpedicular discectomy is experimental/investigational and the lumbar transpedicular discectomy at L3-4, L5-S1, and L 4-5 were [sic] not medically necessary."

The Commissioner is not required in all instances to accept the IRO recommendation. However, the IRO reviewer's conclusion is afforded deference by the Commissioner because it is

based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO reviewer and finds the record does not establish the medical necessity for the surgery and injection.

**V
ORDER**

The Commissioner upholds Midwest Security Insurance Company's adverse determination of July 28, 2008.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.